

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
SOUTH CAROLINA EDUCATIONAL)	WT Docket No. 10-187
TELEVISION COMMISSION)	
Educational Broadband Service Stations)	
)	
WHR465 (B-Group), Conway), SC)	
WHR609 (O-Group), Lancaster, SC)	
WHR674 (C-Group), Columbia, SC)	
WHR933 (C-Group), Walterboro, SC)	
WHR957 (C-Group), Anderson, SC)	
WHQ447 (B-Group), White Stone, SC)	
WND422 (A-Group), Camden, SC)	
WND451 (A-Group), Winnsboro, SC)	
WND452 (A-Group), Pickens, SC)	
WND532 (O-Group), Marion, SC)	
WND533 (O-Group), Beaufort, SC)	
WND534 (A-Group), Greenwood, SC)	

Waiver of Section 27.1206 of the
Commission's Rules

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau

**CHRISTIAN COLLEGE OF GEORGIA, INC.
COMMENTS ON
SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION'S
PETITION FOR WAIVER OF SECTION 27.1206 OF THE COMMISSION'S RULES**

Christian College of Georgia, Inc. ("Christian College"), by its attorney, submits these comments on South Carolina Educational Television Commission's ("SCETV") petition for waiver for twelve studio-to-transmitter licenses in South Carolina ("Petition"). Christian College is licensee of WND620 in Athens, Georgia on the C Channels, and its geographic service area overlaps with that proposed by SCETV for WHR957 in Anderson, South Carolina. Christian asks that its comments be accepted out of time because it became aware of the petition only recently although, as will be explained, it believes it should have been served. This has been

designated a permit but disclose proceeding, the record is still open, and Christian College is also filing them as ex parte comments. Christian College urges the Commission to deny the petition.

Summary

SCETV's petition should be denied for several reasons. First, the procedure SCETV has followed is unprecedented and prejudicial to existing EBS licensees. Second, SCETV in reality wants a waiver of the freeze on new EBS applications or a further reconsideration of the *Two-Way* decisions, but there is no justification for such waiver or reconsideration. Third, SCETV has not even brought itself under the narrow precedents cited in its petition.

SCETV's Petition

SCETV seeks a waiver of Section 27.1206 of the Commission's rules with respect to twelve licenses it acquired years ago for studio-to-transmitter links ("STLs") in the old Instructional Television Fixed Service ("ITFS"), now known as Educational Broadband Service ("EBS"). SCETV wants to, in effect, upgrade these STLs into full, omni-directional stations with protected service areas covering their geographic service areas ("GSAs"). The STL licenses themselves are useless. SCETV is transitioning its sixty-five other EBS facilities from one-way video to wireless broadband in accordance with leases to Clearwire Spectrum Holdings III and Digital Bridge Spectrum Corp. The twelve, isolated point-to-point STLs serve no purpose in that plan. *Petition 2-3*. But SCETV sees this as a glass half full, not half empty. It says "there will be significant coverage gaps in SCETV's and the operators' networks" without a waiver. *Petition 3*. This is no minor matter. Twelve new EBS licenses would represent an 18.46% increase in SCETV's network.

The Pre-Filing Exchange between SCETV and Christian College

In March 2009, SCETV wrote Christian College asking it to address a letter to the Commission, drafted by SCETV, stating it had no objection to giving GSA protection to the STL license, WHR957 in Anderson, South Carolina. Christian College responded through counsel stating that it objected, and it asked to be notified if SCETV filed with the Commission. In May 2010, SCETV again sought Christian College's consent, but Christian College again objected. In that correspondence, counsel for Christian College asked that if SCETV did file, it should appraise the Commission of the objection and notify Christian College of the filing so that it could interpose objection. Copies of these communications are attached as Attachments A through E. The second set of exchanges in May 10, 2010, occurred less than three months before SCETV filed the petition for waiver.

Trusting that SCETV, which describes itself in its petition as the "long-time operator of the premier EBS network in the country," would honor the requests, Christian College lowered its vigilance and did not notice when SCETV's filing was put on public notice under rulemaking procedures. Christian College recently, and to its great surprise, discovered the filing.

SCETV's Unique Procedural Approach Is Without Precedent and Prejudices Existing Licensees

SCETV's election to flesh out its network by asking for a waiver of Section 27.1206 is defective, unprecedented, and prejudicial to Christian College and other EBS licensees for several reasons.

First, on its face, a waiver of Section 27.1206 makes no sense. The rule is merely a technical definition of geographic service area:

The area for incumbent site-based licensees that is bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, which was the previous PSA entitled to incumbent licensees prior to January 10, 2005, and is bounded by the

chord(s) drawn between intersection points of the licensee's previous 35 mile PSA and those of respective adjacent market, co-channel licensees.

Logically and linguistically, definitions aren't "waived."

Second, SCETV cites no precedent for the approach it takes here of seeking a waiver of Section 27.1206. The only case it cites for the proposition that the waiver procedure is appropriate for converting an old STL into full status as a protected EBS station is *Florida Atlantic University, Order on Further Reconsideration*, DA 08-967 (April 25, 2008).

But the applicant there didn't seek a waiver of Section 27.1206. It sought a waiver of the Commission's *Two-Way Reconsideration Order*.¹ Its request for waiver at least made logical sense. The *Two-Way Reconsideration Order* had ruled that STL licenses are subordinate to full EBS licenses and should not be given protected service areas. The petitioner in *Florida Atlantic University* had also followed a different procedure from the one SCETV is urging here. The Wireless Bureau had insisted that Florida Atlantic University obtain the consent of existing, adjacent licensees. Here, SCETV has failed to get obtain consents, failed to tell the Commission that it failed in this regard, failed to tell the Commission that Christian College objected, failed to notify adjacent licensees that it was filing, and, despite all these failures, blandly argued to the Commission that it was unnecessary to do these things.² There is no precedent for waiver using this procedure.

Third, the only other case that SCETV cites is *Board of Trustees of Northern Michigan University, Memorandum Opinion and Order*, DA 08-1764 (August 6, 2008), but this case is even more damaging to SCETV's position. The applicant in that case did not request a waiver of

¹ *Amendment of Parts 1, 21, and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, (July 29, 1999) 14 FCC Record 12764 ("Two-Way Reconsideration Order").

² Given that SCETV argues in its petition that consent of adjacent licensees is unnecessary, SCETV should have disclosed the fact of Christian College's objection to the Commission. There may be other adjacent licensees who object but who are unaware of this proceeding. Indeed, the Commission may require SCETV to notify all adjacent licensees of the proceeding before ruling on the petition.

the narrow, inapplicable Section 27.1206: it asked for a waiver of the freeze the Commission imposed on new ITFS/EBS applications in 1995. SCETV hasn't done this.

Fourth, regardless of what substantive rule or Commission decision SCETV wants waived, its failure to notify Christian College and other adjacent EBS licensees of the petition for waiver cannot be excused. Typically, waivers are sought in the context of applications and in the course of processing the application, the Commission would routinely require notice to affected, adjacent licensees. The hybrid, waiver/rulemaking procedure that SCETV employed gets around these procedural protections. It wants to use rulemaking procedures to obtain the waiver and then ask for a major amendment to its license. At that point, adjacent licensees might be notified of what was in the offing, but it would be too late to object.

Thus, SCETV's petition may be denied on procedural grounds alone.

SCETV Request for Waiver Is Not Justified

The grant of a waiver is not justified under the Commission rules, which provide that a waiver may only be granted on one of two findings:

- (1) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (2) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. Section 1.925(b)(3).

Stated differently, the test for waiver asks if a waiver will serve the underlying purpose of the rule or if there is something unusual about the facts of the case that makes application of the rule inequitable or unduly burdensome.

In applying this test, one must first identify the rule for which waiver is sought. SCETV says it is Section 27.1206, but, as said earlier, that makes no sense. Rather, it is the freeze on new EBS applications that must be waived, as a review of EBS history demonstrates.

In a series of decisions in the 1980s, the Commission allowed educational licensees in the old ITFS service to lease their facilities to commercial operators, who wanted them for so-called wireless cable service. The prospect of earning substantial lease revenue from commercial operators led to swelling numbers of ITFS applications, many of which were mutually exclusive. This put the Commission in the uncomfortable position of having to determine which of two or more educational institutions was the most deserving. As a result, in 1995, the Commission announced a freeze, refusing to accept any further ITFS applications until it could find a better way of choosing between competing applicants. It is still pondering how to do this.³

In the meantime, wireless cable proved to be a commercial failure, and so the Commission was persuaded to change its rules to allow ITFS to be converted from one-way video transmissions to two-way data transmissions. This was done in the *Two-Way* proceedings.⁴ The decisions there did not affect the freeze on new applications, however. It remained in place.

In the course the proceedings, the notion of “protected service areas” evolved. In the *Two-Way Reconsideration Order*, the Commission explicitly declared that STLs licenses would not have protected service areas.⁵ Significantly, the Commission excluded STLs in the expectation that the freeze would be lifted, explaining in footnote that protected service areas

³ There is an ongoing proceeding to lift this freeze and establish new rules to govern the award of licenses in the future. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband access, Educational and Other Advanced Services in the 2150-2161 and 2500-2690 MHz Bands, WT Docket No. 03-66 (“white spaces proceeding”).

⁴ *Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations* (July 10, 1996) 11 FCC Record 18839 (“*Two-Way Order*”). *Amendment of Parts 1, 21, and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, (September 25, 1998) 13 FCC Record 12764. *Amendment of Parts 1, 21, and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, (July 29, 1999) 14 FCC Record 12764.

⁵ The history is summarized in *Florida Atlantic University supra*.

were needed once the freeze was lifted: “An ITFS entity ... shall be accorded such protection by a cochannel or adjacent channel applicant for a *new* station....”(emphasis added).⁶

The point of this history is to show SCETV’s grievance is with the freeze, not Section 27.1206. Were it not for the freeze, SCETV could apply for a new license rather than go through waiver contortions. Indeed, if the freeze were lifted, SCETV’s twelve STL licenses would be swallowed up by whoever got the licenses for the GSAs because STLs are subordinate to new licenses as well as existing ones.⁷

SCETV has made no case for a waiver of the freeze. The first part of the waiver test asks if the waiver would further the underlying rule. The answer is clearly no. A waiver would undermine the rule. The second part of the waiver test asks if the petitioner is in an unique or unusual situation. Again the answer is no. Licenses covering more than half the United States are being held up by the freeze. SCETV has plenty of company.

Conceivably, SCETV is arguing that its grievance is more narrow. Its arguments may be directed at the Commission’s decision in the *Two-Way Reconsideration Order* to exclude STLs from the benefits of protected service areas. But if this is its argument, then there are problems. First, such argument is nothing more than an attempt to get further reconsideration of reconsideration, eleven years after the fact. And second, SCETV had these STL licenses at the time the *Two-Way* rules were being considered. Nothing in the rule or policy bothered SCETV then -- nothing necessitated waiver. However, now that it is leasing its EBS facilities to

⁶ *Two-Way Reconsideration Order* at 19173 Fn 296.

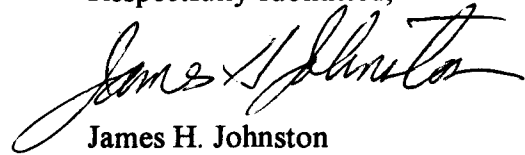
⁷ In fact, the fast approaching “substantial service” deadline requires EBS licenses to demonstrate they are using their licenses to provide service. Since SCETV is not making use of the twelve STLs, its request for waiver may soon be moot.

commercial operators, it has decided to see if it could get twelve additional GSAs. The fact that a new opportunity presents itself to a petitioner is not one of the stated reasons for waiver.⁸

And, as stated earlier, SCETV's arguments also fail even under the limited precedents it cites.

For all of the foregoing reasons, Christian College respectfully requests that these comments be accepted out of time and the petition for waiver be denied.

Respectfully submitted,



James H. Johnston
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1155 Connecticut Avenue NW
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(202) 223-6020

Counsel for:
Christian College of Georgia, Inc.

August 30, 2011

⁸ Christian College is mindful of the fact that denial of this waiver may mean that consumers in these twelve GSAs do not otherwise have broadband, but SCETV has not provided any factual support for this rationale, such as how many broadband providers currently serve these communities. In any event, this problem is not unique to these GSAs.

Attachment A

March 10, 2009

1101 George Rogers Blvd.

Columbia, SC 29201

www.mysctv.org

mail@sctv.org

South Carolina

Christian College of Georgia
PO Box 747
Statham, GA 30666
Attn: President Robert Harris

Re: Geographic Service Area for EBS Station WHR957,
C1-C4, Anderson, South Carolina

Dear President Harris:

As you may know, South Carolina Educational Television Commission ("SCETV") over the years developed an extensive network of Educational Broadband Service ("EBS") stations providing ubiquitous multiple channel coverage of schools and other education sites in South Carolina. In addition to traditional EBS stations that transmitted video services over a wide service area, SCETV also employed EBS stations operating on a point-to-point basis in order to relay signals from origination points to EBS wide area transmitters. One such station is EBS Station WHR957 operating on the C channel group at Anderson, SC.

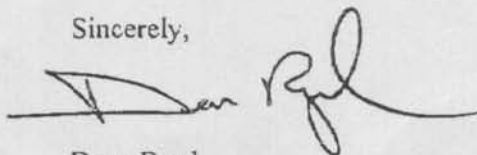
When the FCC modified its rules a few years ago, creating exclusive Geographic Service Areas ("GSAs") for EBS stations, it determined that certain of these point to point stations that had been originally licensed on a "secondary" basis, including Station WHR957, would not obtain a GSA and therefore, at some point, would have to cease operations. However, the FCC has granted a waiver of this approach where a licensee such as SCETV can show that the GSA it seeks would not reduce the GSA(s) of any neighboring station(s), and as a result the neighboring stations have consented to the waiver.

SCETV intends to seek a waiver to obtain a GSA for station WHR957 on this basis. In order to comply with the waiver criteria, as reflected in the attached GSA map, the GSA SCETV would seek for WHR957 would be voluntarily limited in scope. While the GSA for WHR957 would be adjacent to the GSA of your station WND620, Channels C1-C4, Pendergrass, GA, in certain areas, SCETV would specifically request that the FCC grant the waiver in a manner that would NOT reduce your existing GSA in any respect.

SCETV would appreciate if you would confirm you have no objection to SCETV's waiver request for Station WHR957 and the grant of a GSA for that station as depicted on the attached map. We have attached a consent letter for this purpose. Even though the letter is addressed to the FCC, we ask that you execute the letter and return it to the undersigned, so that we can include it in our waiver request.

If you have any questions or concerns about this matter, please contact the undersigned.

Sincerely,



Dean Byrd
Director of Distance Learning
803-261-5322, dbyrd@sctv.org

Attachment B

From: "Jim Johnston" <jimjohn@erols.com>
To: <dbyrd@scetv.org>
Bcc: "Bob Harris" <Harris0623@aol.com>
Subject: GSA for EBS Stations WHR957
Date: Mon, 30 Mar 2009 13:32:19 -0500

Dear Mr. Byrd,

I am telecommunications counsel for Christian College of Athens, Georgia, licensee of EBS station WND620. Bob Harris, president of Christian College, forwarded me a copy of your letter asking him to confirm to the FCC that he has no objection to a waiver for your station to be licensed as a regular EBS station.

We do object and will interpose objection with the FCC. Let me know if and when you filed and the appropriate docket number. In order to protect Christian College's interest, we will file our opposition. If you'd like to talk about this, feel free to call me.

Jim Johnston
Attorney for Christian College of Athens, Georgia
202-223-6020

Dear President Harris:

You may recall last March 2009 that South Carolina ETV ("SCETV"), licensee of Educational Broadband Service ("EBS") station WHR957 requested a consent from Christian College of Georgia to file a request with the Federal Communications Commission ("FCC") to convert ETV's WHR957's point-to-point license into a license with a Geographic Service Area. At the time SCETV was in negotiation with Clearwire and other entities for the lease of all ETV EBS spectrum. The lease contract is now consummated, with Clearwire and DigitalBridge holding the delivery rights for all ETV channels in question.

With this issue now resolved, we again are asking you to provide your consent. We would be happy to address any questions or concerns you may have. And we understand that Clearwire has or soon will contact you to answer any concerns you may have with your lease with them.

We want to reiterate that your consent would not change any of your license WND620 geographic service area to which you are currently entitled to claim interference protection; it would only provide such an area for SCETV's EBS Station WHR957.

The consent form is attached for your review. If you elect to do so, we'll send you the proper documentation and pre-paid envelopes to mail to the FCC.

Thank you for your help with this matter!

Sincerely,

David Crouch
President
[South Carolina ETV](#)

Attachment D

From: "Jim Johnston" <jimjohn@erols.com>
To: <dcrouch@scetv.org>
Bcc: "Bob Harris" <Harris0623@aol.com>
Subject: SCETV -- EBS Station WHR957
Date: Thu, 6 May 2010 15:22:30 -0400

Mr. Crouch,

I am an attorney in Washington DC and represent Christian College of Georgia on EBS matters. Bob Harris forwarded to me your email regarding your plans to convert your EBS license WHR957 from a point-to-point to a geographic service area license. You asked Christian College to provide you a letter stating it had no objection.

Christian College objects to any such conversion. Indeed, if you file an application, we will interpose an objection with the FCC. Therefore, if you do file, I would appreciate your asking your attorneys, or whoever files the application, to notify me when it is filed, so that we can file our objection.

Yours truly,
James H. Johnston
202-223-6020

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May 10, 2010

David L. Crouch
President
South Carolina ETV and Radio
1101 George Rogers Boulevard
Columbia SC 29201-4761

Re: Christian College of Georgia EBS license WND620

Mr. Crouch:

I represent Christian College of Georgia in connection with EBS station WND620 in Athens, Georgia. Last week, you emailed Mr. Harris asking if the College would consent to SCETV's plans to seek a Geographic Service Area ("GSA") license for SCETV's station WHR957. I responded with an email to you, in which I said the College objected, and I want to confirm that with this letter.

If SCETV files with the FCC to obtain GSA status for WHR957, the College will interpose an objection. And if SCETV does file, we request that it advise the FCC of the College's objection and that it notify me of the filing.

Very truly yours,

James H. Johnston

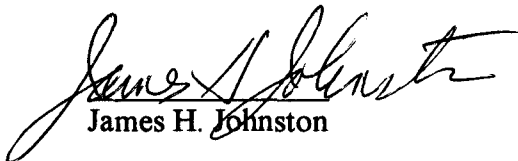
Cc: Bob Harris

Certificate of Service

I hereby certify that on this 30th day of August, 2012, a true and correct copy of the foregoing Christian College of Georgia, Inc.'s Comments, WT Docket No. 10-187, was submitted electronically to the Federal Communications Commission and served by first-class postage upon the following:

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James H. Johnston